UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,193	12/03/2003	Bernard E. Brady JR.	EMC-101(US)	4674

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EXAMINER
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ART UNIT	PAPER NUMBER
2442	

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02/24/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Advisory Action **_Before the Filing of an Appeal Brief_**	10/727,193	BRADY ET AL.
	Examiner	Art Unit	
	John M. MacIlwinen	2442	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>17 February 2010</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *129-182*.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

 /Joon H. Hwang/
 Supervisory Patent Examiner, Art Unit 2447

1.   Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive.

        Applicant first argues the rejections made under 35 USC 112 directed to the language "an index indicating how to enter … transmission events unabridged", said language appearing in claims 126, 159 and 172. Applicant recites language from page 6 of their Specification which discusses an index providing a location of data, along with discussing storing data in its entirety. However, this section of Applicant's specification, along with the rest of Applicant's specification, provides no written description for the language "enter … transmission events unabridged". Furthermore, though the Specification describes an "index" in general and that an indix can provide a location, the Specification does not describe where the index is "indicating how" to perform any type of action (that is, where the index provides instructions "how"); particiularly where said action is "enter[ing] … events unabridged". Furthermore, data "storage…in its entiety" is not the same things as "enter … transmission events unabridged". Applicant's arguments thus continue to not be persuasive.
        Applicant next requests the Examiner "to indicate which characterization record then comprise information about location of, e.g., of the unabridged transmission event". Applicant's argument, directed to a rejection under 35 USC 112 and thus not involving prior art, thus appears to be a request to explain Applicant's Specification in light of said Specification's lack of written description. The Examiner reccomends that in order to overcome the pending rejections under 112, Applicant clarify their claim language and utilize language clearly supported in their originally filed Specification.
        On page 5, Applicant argues that they are "of opinion that Wiley et al. did not disclose…" the passage recited on pages 4 and 5. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.
        Applicant next argues claim 129, arguing that the "keysets" in Fig. 4 of Wiley are "not equivalent to 'one or more data elements' … because the keysets 58 and 60 are equivalent to data features or characteristics of the corresponding transmission events". Applicant's arguments regarding "features or characteristics of the corresponding transmission events" do not correspond to Applicant's claim language. Additionally, Applicant's claim language does not require that the claimed "indicators of location" not also be capable of serving as a type of "feature or characteristic". Applicant's argument thus is not persuasive.

Applicant next argues Wiley, col. 4 lines 24 – 30. In this section of Wiley, Wiley discusses that information representing the data within an IP packet (source IP address, source port, destination IP address and destination port), and/or the information itself may be stored in a database. This IP packet information can certainly correspond to the claimed "transmission event" as well as "data elements comprised in … transmission events". Sending and then reciving IP packet would represent a "transmission event"; the data within said packet, which includes the source IP address, source port, destination IP address and destination port, can correspond to "data elements comprised in … transmission events". Applicant's arguments thus continue to be unpersuasive.
        As discussed in col. 4 lines 40 – 57, for example, the datasets of Wiley can be pointed to by keysets; and said keysets may include IP information such as source and destination ports/addresses.
        Applicant appears to be arguing that the claimed "indicators of location" should not be represented by information that could be gathered from the transmissions themselves. However, Applicant's claim language does not recite such a limitation.. Applicant's arguments thus continue to be unpersuasive.
        Applicant next argues that "suggestion or motivation" to combine Wiley and Khanokar has not been shown. However, on page 8 Applicant recites the motivation statement relied upon by the Examiner, said motivation to combine citing the suggestions of Wiley. Applicant's argument thus is not persuasive.
         Applicant's argument that "faster" is somehow an unclear motivation for improvement is not persuasive.
        Applicant's arguments directed to what they believe "the problem to be solved" of the prior art is not persuasive as all the teachings of the prior art are utilized, not just a subset related to Applicant's interpretation of what "the problem to be solved" may be.
        Applicant next argues that Wiley does not discuss "providing faster access to stored data". Wiley discusses in col. 2 lines 15 -30 that their disclosure improves managing network traffic by reducing the number of searches required for identifying network traffic. Col. 2 lines 30 - 40 continues to teach that Wiley's disclosure enables handling more traffic with reduced resources. That they word "faster" does not appear in this section does not support Applicant's contention that it would not have been obvious to modify Khanokar with Wiley.